

UNITED STATES OF AMERICA,

Plaintiff,

v.

MACARIO ORTIZ-LOPEZ,

Defendant.


**ORDER ON DEFENDANT’S MOTION TO STRIKE SURPLUSAGE FROM
INDICTMENT PURSUANT TO FEDERAL RULE OF CRIMINAL PROCEDURE
7(d) AND FEDERAL RULE OF EVIDENCE 403**

This matter is before the Court upon Defendant's Motion to Strike Surplusage from Indictment Pursuant to Federal Rule of Criminal Procedure 7(d) and Federal Rule of Evidence 403. The Court finds that said Motion should be DENIED, as it applies to the Superseding Indictment which was filed on July 11, 2011.

A motion to strike language in an indictment should be granted only when the language is immaterial or irrelevant or prejudicial. As charged in Count I, the allegation of “\$629,790.00” is both material and relevant to the government’s burden of proving that the statement or representation allegedly made by the Co-Defendant, Mr. Munoz-Cardenas, was false and material. The Defendant is only charged with Count II and Defendant does not move to strike any language from the count to which he is charged. The Court finds that any prejudice to Mr. Ortiz-Lopez would be minimal, if at all.

For the reasons stated herein, Dkt. No. 66 is **DENIED**.

SO ORDERED. 07/29/2011


Hon. Tanya Walton Pratt, Judge
United States District Court
Southern District of Indiana

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